

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

CITY OF ST. HELENA,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION,

Respondent;

NAPA VALLEY WINE TRAIN, INC.,

Real Party in Interest.

A104466

(PUC Dec. Nos. 99-08-018,
03-01-042, 03-10-024, 03-10-025)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on June 21, 2004, be modified as follows:

At the end of the second full paragraph on page 14, add as footnote 7:

7. In petitions for rehearing, the Wine Train and PUC urge us to remand the cause to the Commission “to refresh and update the factual record” which, it is claimed, contains stale information. Our decision is based on the record before us and we decline to do so. However, we acknowledge that nothing in this opinion precludes the Wine Train from applying for public utility status based upon new facts, if any, relating to the issue of “transportation” consistent with this opinion.

There is no change in the judgment.

The petitions for rehearing are denied.

Dated:

Kay, P.J.